

Final Notice of Class Action Settlement and Claims Process

David Jordan, et al., v. Mechel Bluestone, Inc. and Dynamic Energy

Case No. 5:16-cv-04413

United States District Court for the Southern District of West Virginia

The Court has authorized the distribution of the final class action settlement that is due to the class members listed in Exhibits A and B. Please check the attached lists to verify that your name is spelled correctly. If it is not, please contact Mountain State Justice as soon as possible in order to correct the misspelling.

The entire class approved by the Court included individual workers who were terminated from full-time employment at the mining site known as Coal Mountain by Dynamic Energy, Inc., or by the entities known as “Dynamic Energy - Justice Highwall Mining” or “Justice Highwall Mining,” from November 30, 2013 to December 30, 2013, or within a 90-day period encompassing those dates.

Forty-five miners are entitled to receive \$9,100.00, as set forth below, as the result of this litigation. Those miners are listed in Exhibit A.

After the parties entered the Mediation Agreement providing \$9,100.00 per miner, seventy-four miners voluntarily accepted \$8,000.00 from Bluestone instead of accepting the \$9,100.00. Through the course of additional litigation, the Defendants agreed to pay a sum providing only an additional \$135.13 apiece to those seventy-four. Those miners are listed in Exhibit B.

The Court has authorized this Notice of the Settlement reached by the Parties in the class action lawsuit that is currently pending in the U.S. District Court for the Southern District of West Virginia, Case No. 5:15-cv-03014.

The purpose of this notice is to explain how you may claim your award. If you have any questions, contact the Workers’ Rights Program at Mountain State Justice in Beckley: (681) 207-7510.

A. THE NATURE AND COURSE OF THE PROCEEDINGS.

This lawsuit sought to recover a penalty under the WARN Act, equal to sixty days of wages, because the Defendants allegedly failed to provide the two months of advanced notice prior to terminating or reducing the workforce, including you, at the Coal Mountain Surface Mine No. 1 in or around November and December 2013, allegedly in violation of the WARN Act.

On May 17, 2016, Mountain State Justice filed this lawsuit on behalf of David Jordan, seeking to recover damages under the WARN Act for all Coal Mountain miners. On December 5, 2016, the Parties reached a Mediation Agreement to resolve this litigation, providing

\$9,100.00 per miner. In April 2017, in lieu of the \$9,100.00 mediated amount, the Defendants paid \$8,000.00 to seventy-four miners from among the class of 118.

On April 19, 2017, the court preliminarily certified this case as a class action and approved the December 5, 2016 mediation agreement pending the resolution of the class members, meaning that the lawsuit could be maintained on behalf of all Coal Mountain miners who were terminated in or around November and December 2013, as noted.

On March 29, 2018, the Court issued an order granting the Plaintiff's December 20, 2016 Motion to Certify the case as a class action, ordering the inclusion of the workers who were laid off from Justice Highwall Mining at Coal Mountain during the class period mentioned above, and setting a date of April 25, 2018 for a Final Settlement Hearing. At that hearing, the Court approved the distribution of the \$9,100.00 awards to the forty-five class members who had not previously accepted \$8,000.00 from Bluestone for the 2013 WARN Act violation at Coal Mountain. The Court ordered Bluestone to complete the payment of an additional \$225,500.00 by May 24, 2018. Class Counsel appealed the portion of the March 29 Order that denied further relief to the 74 side-settling class members, and the parties thereafter agreed for Bluestone to pay \$10,000.00 to fully resolve the issues on appeal.

Bluestone has agreed to make the final payment due under this settlement on November 16, 2018. After receiving that payment, Mountain State Justice will prepare **individual award checks for miners to pick up at the office of Mountain State Justice in Beckley on or after November 26, 2018**, as set forth more fully below.

B. THE SETTLEMENT.

(1) **Relief:** If your name is on the attached lists and you would like to claim an award in this case, you may pick up the check **on or after November 26, 2018** at Mountain State Justice, Inc., 223 Prince Street, Beckley, WV 25801, (681) 207-7510.

If you do not pick up your check by April 30, 2019, your award will be donated to the Wyoming County Commission for use in supporting the community in and around Coal Mountain.

The settlement awards are as follows:

- (a) Each miner listed on Exhibit A receives \$9,100.00.
- (b) Each miner listed on Exhibit B receives \$135.13.
- (c) The class representative receives a payment of fifteen thousand dollars (\$15,000.00) for serving as the class representative and advocating for the class throughout this litigation.

- (d) Plaintiff's counsel, Mountain State Justice, receives attorney's fees in the amount of one thousand, one hundred fifty dollars (\$1,150.00) for each of the forty-five miners listed on Exhibit A but not anything for any of the 74 miners listed on Exhibit B, in order to compensate Mountain State Justice for litigating these claims, defeating Bluestone's Motion to Dismiss all of the WARN Act claims for Coal Mountain, and for securing the settlement of these WARN Act claims for the Coal Mountain miners.
- (e) Class counsel receives thirty thousand dollars (\$30,000.00) to administer the class action settlement---that is, to process the payments and manage the settlement distribution.
- (f) Any unclaimed portion of the settlement proceeds will be distributed to a charitable or public program in Wyoming County, West Virginia.
- (g) Class counsel and the class representative consider the settlement to be in the best interest of the class because it represents roughly the payments to which the miners would be entitled if they tried the case and won, and it avoids any further delay by Bluestone.

(2) **Release:** This class settlement agreement releases and forever dismisses all claims against Dynamic Energy, Mechel Bluestone, and related entities that were asserted in this case regarding the alleged November-December 2013 WARN violation.

C. YOUR CHOICES:

(1) **Accept the settlement.** You may pick up your check beginning on or after November 26, 2018 at the Mountain State Justice, 223 Prince Street, Beckley, WV 25801. MSJ is open Monday through Friday from 8:30am to 5:00pm. You may call ahead if you have any questions: (681) 207-7510.

OR

(2) **Decline the settlement.** If you wish to decline the settlement, you may notify Mountain State Justice of your intention. If you do not claim your settlement funds by April 30, 2019, the funds allocated to you under the settlement will be donated to the Wyoming County Commission for use in supporting the community in and around Coal Mountain.

Do not address questions about the settlement or the litigation to the clerk of the court or to the judge. If you have any other questions, you may consult with class counsel, Sam Petsonk or Bren Pomponio, at (681) 207-7510, or by mail at Coal Mountain Class Settlement, Mountain State Justice, Inc., 223 Prince Street, Beckley, WV 25801.

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